IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2040 OF 2005

ALONG WITH

WRIT PETITION NO.2041 OF 2005

AND WITH

WRIT PETITION NO.2042 OF 2005

The Kolhapur Sugar Mills Ltd. & ors. Petitioners
vs.
The Sangli Bank Ltd. & anr. Respondents

Mr.Mustafa Doctor along with Ms.Christabel Afonso i/b.M/s.Hariani & Co. for the petitioners in all the petitions.

Mrs.Usha Srivastava i/b.M/s.Consulta Juris for the respondent no.1.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 26th September, 2006

P.C.

Rule. Heard forthwith.

2. Three Suits which were pending before the Civil Court on the provisions of the Debt Recovery Act becoming applicable were transferred to Debts Recovery Tribunal (DRT). DRT by the impugned orders allowed the applications and decreed in favour of respondent no.1. The petitioners herein aggrieved by the order preferred an appeal before the Debt Recovery Appellate Tribunal (DRAT). DRAT vide impugned order dismissed the appeal,.

From the reasoning of DRAT we find that the same reasons have been adopted as that of DRT.

3. The main contention as urged on behalf of the petitioners herein is that they had sent communication dated 17.4.1995 pointing that the Bank Guarantees had become ineffective and invalid because of the redetermination of prices notified by the Central Government and consequently requested that the amount be released in their favour. It is also brought to our attention that in fact the term of the Bank Guarantees expired on 15.5.1995 and they had not been renewed thereafter. The petitioners on 23.6.1995 addressed letter of the Chairman of respondent no.1 amongst other requesting the Bank to adjust the entire amount of deposit and interest accrued thereon against the company's old outstanding upon reconciliation of the company's account to mutual satisfaction. It is the case of the petitioners that considering the letter of 23.6.1995 the amount should have been adjusted against the pending Suits which are the subject matter of the three petitions. We are not inclined to accept that contention as is sought to be canvassed on behalf of the petitioners by their learned counsel. The letter of 23.6.1995, if construed, would only mean that the Bank was called upon to adjust old outstanding against the company's accounts. In other words, in respect of

whatever monies were due and owed by the petitioners to the respondents.

4. DRT had framed several issues. One of the issues framed was, whether the loan amount of respondents 1 to 3 stands discharged by the Bank Guarantees with the applicants. We really do not want to go into this issue as it will be open to the parties in view of the order to be made to apply to the Tribunal based on the pleadings if required to re-cast the issue. We find that the issue of adjustment though was in issue before DRT, the same has not been answered as was required according to law. The question to be answered is, whether as on the date of communication of the letter dated 23.6.1995, considering the letter by petitioner no.1 to respondent no.1 whether adjustment had been done or could be done. If the adjustment had been done on that day or soon thereafter, interest would cease to accrue and accounts accordingly made up. This was an issue which had to be required to be considered and decided by the Tribunal. We find that this aspect has not been considered by the DRT. As long as monies of the petitioner were in the hands of respondent no.1 and the petitioner had called on respondent no.1 to adjust the amount against old outstanding and the letter is construed in its correct context, the respondent no.1 was bound to consider and adjust the said amount, unless

there was any legal impediment. In the instant case the period of the Bank Guarantee had expired and there was a change in the policy of the Government of India in the matter of free sale sugar.

5. Considering that this aspect of the matter had not been considered, in our opinion, ends of justice would be met if the impugned orders are set aside and all the matters are remanded back to DRT for consideration afresh after hearing both the parties. We make it clear that we have not decided any other issue and all arguments which are available to the parties before us may be decided by the DRT.

. In the light of that, rule is made absolute in terms of prayer (a) in all the three petitions. There shall be no order as to costs. The DRT is directed to dispose of the matters at any rate not later than four months from the copy of this order being made available to the DRT.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)